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JOHN TENNISON

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 JOHN TENNISON,

12 Plaintiff,

13 v.

14 CITY AND COUNTY OF
SAN FRANCISCO; SAN FRANCISCO
15 POLICE DEPARTMENT; PRENTICE EARL
SANDERS; NAPOLEON HENDRIX; and
16 GEORGE BUTTERWORTH,

17 Defendants.

Case No. C 04-00574 CW

**DECLARATION OF ETHAN A. BALOGH
IN SUPPORT OF MOTION TO COMPEL
THE CITY TO PRODUCE AUDIOTAPES
FOR NON-DESTRUCTIVE FORENSIC
TESTING, AND MOTION TO COMPEL
CITY TO PRODUCE DOCUMENTS AND
PROFFER WITNESS(ES) FOR
DEPOSITION**

Date: May 18, 2005
Time: 9:30 a.m.
Judge: Hon. Edward M. Chen
Courtroom C, 15th Floor

1 I, Ethan A. Balogh, declare as follows:

2 1. I am a partner in the law firm of Keker & Van Nest, LLP, counsel to plaintiff
3 John J. Tennison in this matter. I make this declaration on my own personal knowledge and
4 could competently testify thereto if called as a witness.

5 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of Judge
6 Claudia Wilken's Order Granting Amended Petition for Writ of Habeas Corpus, filed on August
7 26, 2003 in *Tennison v. Henry*, USDC, N.D.C.A., Case No. 98-3842.

8 3. Attached hereto as Exhibit 2 is a true and correct copy of Judge Joseph C. Spero's
9 Order Granting in Part and Denying in Part Petitioner's Motion for Discovery, filed on
10 September 21, 2001 in *Tennison v. Henry*, USDC, N.D.C.A., Case No. 98-3842.

11 4. Attached hereto as Exhibit 3 is a true and correct copy the subpoenas served on
12 the San Francisco Police Department and the San Francisco District Attorney's Office on
13 October 3, 2001 in *Tennison v. Henry*, USDC, N.D.C.A., Case No. 98-3842.

14 5. In response to a subpoena served on the District Attorney's office, on October 3,
15 2001, the District Attorney's office produced approximately 1,300 pages of documents, 26
16 audiotapes, 4 videotapes and approximately 130 photographs in November 2001. In January
17 2002, the District Attorney's Office supplemented its production with another 600 pages of
18 documents and 1 audiotape. George Butterworth handled the production for the San Francisco
19 District Attorney's Office. In November 2001, in response to a subpoena served on the San
20 Francisco Police Department, on October 3, 2001, the San Francisco Police Department
21 produced approximately 250 pages of documents and 14 audiotapes. In January 2002, the Police
22 Department supplemented its production with another 125 pages of documents and 188
23 photographs. Counsel for the San Francisco Police Department handled that production.

24 6. Attached hereto as Exhibit 4 is a true and correct photocopy of the audiotape
25 labeled "Masina Fauolo 4/23/90", bearing the Bates production number DA00831 and a true and
26 correct copy photocopy of the audiotape labeled "M. Fauolo 4/23/90, 891 092 371", bearing the
27 Bates production number DA00838. These audiotapes were never produced in response to the
28

1 subpoenas served on the San Francisco Police Department or District Attorney's Office in
 2 *Tennison v. Henry*. They were produced by the City on behalf of the District Attorney's office
 3 for the first time in December 2004 in response to Tennison's request for production of
 4 documents and things.

5 7. Attached hereto as Exhibit 5 is a true and correct copy of a document titled "List
 6 of Tapes—People v. Tennison and Goff. This document was never produced in response to the
 7 subpoenas served on the San Francisco Police Department or District Attorney's Office in
 8 *Tennison v. Henry*, it was produced for the first time by the City on behalf of the District
 9 Attorney's office on December 16, 2004.

10 8. Attached hereto as Exhibit 6 is a true and correct copy a letter from Steven P.
 11 Ragland to Evan H. Ackiron, dated December 17, 2004.

12 9. Attached hereto as Exhibit 7 are a true and correct copies of a letter from Steven
 13 P. Ragland to Scott D. Wiener, dated January 10, 2005 and a letter from Steven P. Ragland to
 14 Scott D. Wiener, dated January 24, 2005.

15 10. Attached hereto as Exhibit 8 is a true and correct copy a letter from Evan H.
 16 Ackiron to Steven P. Ragland, dated February 2, 2005.

17 11. Attached hereto as Exhibit 9 is a true and correct copy a letter from Khari Tillery
 18 attaching Tennison's Third Set of Requests for Production of Documents and Inspection of
 19 Tangible Things to Defendant City and County of San Francisco, served February 18, 2005.

20 12. Attached hereto as Exhibit 10 is a true and correct copy of Defendant City and
 21 County of San Francisco's Responses to Tennison's Third Set of Requests for Production of
 22 Documents and Things, served March 15, 2005.

23 13. Attached hereto as Exhibit 11 are true and correct copies of a letter from Steven P.
 24 Ragland to Evan H. Ackiron, dated March 25, 2005, a letter from Steven P. Ragland to Scott D.
 25 Wiener, dated March 30, 2005 and a letter from Steven P. Ragland to Evan H. Ackiron, dated
 26 April 5, 2005.

1 14. Attached hereto as Exhibit 12 are true and correct copies of a letter from Scott D.
2 Wiener to Steven Ragland, dated March 28, 2005, a letter from Scott D. Wiener to Steven
3 Ragland, dated March 31, 2005, and a letter from Scott D. Wiener to Steven Ragland, dated
4 April 6, 2005.

5 15. I have reviewed audiotape transcripts from the SFDA and have been present at the
6 questioning of Pauline Maluina where I learned that Pauline Maulina recanted her eyewitness
7 testimony before trial, and was bullied by the prosecution for three days into withdrawing that
8 recantation and testifying against Tennison. Since then, Ms. Maluina has recanted that testimony
9 in a declaration, dated June 17, 2003, in an interview with the District Attorney's investigator
10 Ron Leon on July 7, 2003, in an interview with the District Attorney Terence Hallinan and
11 investigator Anthony Saab on August 13, 2003 and in deposition on April 7-8, 2005, and
12 established that she was not a witness to the Shannon homicide, and was bullied by Hendrix and
13 Butterworth (in Sanders' presence) into testifying falsely against Tennison at trial.

14 16. Attached hereto as Exhibit 13 is the Declaration of Richard W. Sanders in Support
15 of Tennison's Motion to Compel Inspection and Testing of Certain Audiotapes, dated April 8,
16 2005.

17 17. Attached hereto as Exhibit 14 is a true and correct copy of Tennison's Second Set
18 of Requests for Production of Documents and Things to Defendant City and County of San
19 Francisco, served February 1, 2005.

20 18. Attached hereto as Exhibit 15 is a true and correct copy of the Notice of
21 Deposition of City and County of San Francisco Under Federal Rule of Civil Procedure 30(b)(6),
22 served February 1, 2005.

23 19. Attached hereto as Exhibit 16 is a true and correct copy of Defendant City and
24 County of San Francisco's Responses to Plaintiff John Tennison's Second Set of Requests for
25 Production of Documents and Things, served March 3, 2005.

26 20. As of this date, the City has still not produced any documents responsive to
27 Tennison's Second Set of Requests for Production of Documents and Things.
28

21. Attached hereto as Exhibit 17 is a true and correct copy of a letter from Daniel Purcell to Scott Wiener and Sherri Sokeland Kaiser, dated March 9, 2005.

22. Attached hereto as Exhibit 18 is a true and correct copy of a letter from Daniel Purcell to Scott Wiener and Sherri Sokeland Kaiser, dated March 16, 2005.

23. Attached hereto as Exhibit 19 is a true and correct copy of a letter from Scott Wiener to Daniel Purcell, dated March 16, 2005.

24. Attached hereto as Exhibit 20 is a true and correct copy of a letter from Daniel Purcell to Evan H. Ackiron and Scott D. Wiener, dated February 9, 2005.

25. Attached hereto as Exhibit 21 is a true and correct copy of a letter from Sherri Soekland Kaiser to Daniel Purcell, dated March 24, 2005.

26. As of this date, the City has still not provided Tennison with dates for the deposition of the City's 30(b)(6) witness.

27. On April 5, 2005 Sherri Kaiser wrote to Tennison's counsel regarding the City's continued noncompliance with the PMK deposition notice and stated,

"While I have spoken with a number of people at the San Francisco Police Department and have made substantial progress, my task is complicated by the fact that many of your requests do not specify the relevant time period. For example, you request all policies and training materials related to a series of topics, apparently in an attempt to create an evidentiary basis for your *Monell* claims. Without restricting the time period of your request, you appear to be asking for a deponent who can speak to any and all policies or trainings related to each topic, both currently and at any historical time period since the inception of the SFPD.

Of course, I know that you do not intend this sort of absurd result. To alleviate the temporal ambiguities, could you please review your requests and, where the time period for a particular request is unspecified, please specify one?"

28. Attached hereto as Exhibit 22 is a true and correct copy of a letter from Daniel Purcell to Sherri Sokeland Kaiser, dated April 6, 2005.

29. Attached hereto as Exhibit 23 is a true and correct copy of this Court's Order re: Plaintiff's Request for Production of Documents.

30. Attached hereto as Exhibit 24 is a true and correct copy of a letter from Sherri Kaiser to Dan Purcell, dated April 13, 2005.

/s/ Ethan A. Balogh
ETHAN A. BALOGH